

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FRITZ DAIRY FARMS, LLC, et al.,)	CASE NO.: 5:12-CV-1736-JRA
)	
Plaintiffs)	
v.)	JUDGE JOHN R. ADAMS
)	
CHESAPEAKE EXPLORATIONS,)	
LLC, et al.,)	<u>MOTION FOR STAY PENDING APPEAL</u>
)	<u>AND FOR BOND WAIVER</u>
Defendants)	
)	

Now come Plaintiffs, Fritz Dairy Farms, LLC, Michelle Fritz, and Mark Fritz, who hereby move for a stay of this Court's Order granting Defendant's Motion to Enforce Settlement Agreement entered in this case on March 1, 2013 and a bond waiver.

Respectfully submitted,

/s/ Warner Mendenhall
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)	
Plaintiffs)	
v.)	JUDGE JOHN R. ADAMS
)	
CHESAPEAKE EXPLORATIONS,)	
LLC, et al.,)	<u>MEMORANDUM IN SUPPORT OF</u>
)	<u>DEFENDANTS' MOTION FOR STAY</u>
Defendants)	<u>PENDING APPEAL AND FOR BOND WAIVER</u>
)	

Pursuant to Rule 62 of the Federal Rules of Civil Procedure and/or Federal Rule of Appellate Procedure 8(a) the Defendants request an order staying the district court's judgment of March 1, 2013 and to either waiver of bond, or a determination of appropriate bond.

The Appellants filed their Notice of Appeal with this Court on March 22, 2013, indicating that they are appealing to the Court of Appeals for the Sixth Circuit. The Appellate Court, has yet to issue a case number.

In determining whether a stay should be granted on appeal the same four factors that are considered in evaluating a motion for preliminary injunction are reviewed. These factors are: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. *Ohio ex rel. Celebrezze v. Nuclear Regulatory Comm'n*, 812 F.2d 288, 290 (6th Cir. 1987). To justify the granting of a stay, however, a movant need not always establish a high probability of success on the merits. *Ohio ex rel. Celebrezze*, 812 F.2d at 290. Instead, the probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiffs will suffer absent the stay. *Id.*

Although there are many issues on appeal, the testimony at the hearing established that the Defendants/Appellants did not agree to, nor did they consult with counsel regarding approval of the confidentiality provision of the settlement. They are likely to succeed on this issue.

Harm to both parties occurs if the stay is not granted. Should the Court of Appeals reverse this Court's judgment, then the Defendants-Appellees would incur significant inconvenience and cost to remove from the Plaintiffs-Appellants' property the leases and other documents that Defendants seek to file.

Additionally, current leases do not expire, and the extension of the leases, if any, would not take place until July 27, 2015. Docket # 27, pp. 00016; 00024; 00032; 00038. It is likely that the appellate issues would be resolved by that time obviating the need for a bond.

The public interest will be served by a stay, at least until July 27, 2015, because there is no reason to record the documents until that date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served to all parties via the Court's CM/ECF system in accord with Fed. R. Civ. P. 5(b)(2)(E), this 1st day of April, 2013.

/s/ Warner Mendenhall
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